

SERVICE DATE – DECEMBER 12, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 590X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--  
(BETWEEN MEMPHIS AND CORDOVA) IN SHELBY COUNTY, TN

Decided: December 11, 2001

By petition filed on August 24, 2001,<sup>1</sup> CSX Transportation, Inc. (CSXT), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 13.34-mile line of railroad, extending from milepost ONI 224.00 near Memphis, to milepost ONI 210.66 near Cordova, in Shelby County, TN. On October 3, 2001, Bolen Brunson Bell (BBB) filed a reply in partial opposition to the proposed abandonment. On October 23, 2001, CSXT filed a motion for leave to respond and a response to BBB's protest. On November 13, 2001, BBB filed a reply in opposition to CSXT's motion. We will accept the supplemental pleadings filed by CSXT and BBB,<sup>2</sup> and deny the petition for exemption.<sup>3</sup>

BACKGROUND

Four shippers, BBB, Jimmy Whittington Lumber Company (Whittington Lumber), Edmonds Material, Inc. (Edmonds), and Memphis Light Gas and Water (Memphis Light), are currently located on the line. According to CSXT, the traffic of these shippers has been

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on September 13, 2001 (66 FR 47724).

<sup>2</sup> Although our regulations under 49 CFR 1104.13(c) do not permit replies to replies, we construe our rules liberally under 49 CFR 1100.3 to allow such replies where they will contribute to a complete record without prejudicing any party or delaying the proceeding. Our acceptance of these pleadings meets these criteria.

<sup>3</sup> On September 19, 2001, Tamco, Inc., filed a notice of intent to file an offer of financial assistance (OFA) and requested that the Board toll the period for submitting OFAs. On October 2, 2001, the City of Memphis (the City) requested issuance of a public use condition. Our denial of CSXT's petition for exemption moots labor protection, the OFA process, and environmental issues, including the City's request for a public use condition.

declining, from 589 cars in 1999, to 472 cars in 2000, and 44 cars for the first 2 months of 2001.<sup>4</sup> As traffic declined, CSXT states that its losses have grown. CSXT claims that it is not economical to continue to operate the line, and that traffic on the line does not cover the cost of operation. It offers the following table in support of its assertion.

	<b>Base Year</b>	<b>Forecast Year</b>	<b>Subsidy Year</b>
Revenues Attributable	\$366,568	\$383,699	\$399,009
Avoidable Costs	\$383,322	\$442,621	\$447,039
Subsidization Costs	-	-	\$699,500
Return on Value	-	\$158,256	\$158,264
Avoidable Loss	\$ 16,754	\$ 58,922	\$ 50,300
Avoidable Loss and Opportunity Costs	-	\$217,178	-
Subsidy Year Loss	-	-	\$907,794

CSXT states that operations on the line are complicated because, after leaving Leewood Yard, the train must enter a portion of the jointly owned CSXT-Canadian National Illinois Central (CNIC) double-track main line, which handles about 40 trains per day. The train serving the line must wait until the track is clear. A reverse move back over the double main line is also necessary, resulting in an additional delay. As a result, CSXT states that service to BBB generally takes at least 2 hours for a three-person crew, twice a week. Service to Edmonds and Whittington Lumber is made by a three-person crew once a week and usually takes from 6 to 8 hours.

CSXT also states that, in order to serve all four customers, it must operate over seven bridges on the line, all of which are in need of substantial repair. The condition of the first two bridges caused CSXT to impose an embargo of the line on March 1, 2001, to avoid unsafe operations. It offers the following table of estimated costs to repair and rebuild each bridge, which is based on its own inspection.

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<sup>4</sup> As noted below, an embargo has been in place since March 1, 2001.

Bridge Number	Milepost	Repair Cost	Rebuild Cost
1	223.3	\$ 214,500	\$ 360,000
2	218.5	485,000	4,446,000
3	218.4	38,000	540,000
4	218.3	115,000	756,000
5	218.1	45,000	576,000
6	214.9	108,000	216,000
7	211.0	90,000	147,000
<b>Total</b>		\$1,095,500	\$7,041,000

CSXT submits that a \$699,500 expenditure to repair bridges 1 and 2 in order to return the line to service is not justified for a line that had an operating loss of \$16,754 in the base year. CSXT asserts that, even if it spends \$1,095,500 to repair all seven bridges, it will need to begin rebuilding the bridges by the year 2006, at an additional cost of \$7,041,000.

BBB is located at milepost ONI 223.80, just beyond bridge number 1, where it operates a transload facility. BBB received 134 carloads in 1999, 198 carloads in 2000, and 33 carloads through March 1, 2001, of inbound lumber. BBB currently uses another transload facility elsewhere in the Memphis area. CSXT states that it had been discussing with BBB the relocation of the transload operation from the line to CSXT's Leewood Yard.<sup>5</sup>

BBB objects to CSXT's abandonment of 1,000 feet of track (0.2 miles) between the cutpoint at the beginning of the abandonment (milepost 224.00) and BBB's place of business (milepost 223.8). BBB contends that an abandonment exemption should be denied where affected shippers contest abandonment and it has not been shown that the revenues from their traffic are clearly marginal compared to the cost of operating the involved line. BBB argues that it is not evident that the revenues from its traffic are marginal compared to the cost of operating the 0.2-mile line segment that it uses. Even though CSXT did not segregate revenues and costs for the 0.2-mile segment in its petition, BBB submits that there is a strong indication from the available evidence that operation of that segment is highly profitable. BBB asserts that its traffic

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<sup>5</sup> CSXT states that it has made available to all of its customers on the line the transload facility at Leewood Yard. It submits that this facility is less expensive to operate than the line and eliminating the low-priority move over the CSXT-CNIC double main line should result in more efficient and timely service to the customers.

is substantial and growing and that the density of originated and terminated rail traffic is healthy. Even assuming that CSXT is correct that it takes more time to serve BBB because of the need to wait to cross CNIC track, BBB contends that the cost for that short transportation cannot be substantial enough to exceed the corresponding revenues, and it submits that the actual facts in that respect cannot be gleaned from the petition.<sup>6</sup> Accordingly, BBB requests that we decline to grant an exemption and require CSXT to file a formal application, if it desires to go forward with the abandonment of the 0.2-mile segment.

In its October 23, 2001 response, CSXT argues against bifurcation<sup>7</sup> and partial denial of the abandonment. It “reluctantly” provides facts relating to the bifurcated operation of the line, and accuses BBB of hiding evidence that CSXT assumes is unfavorable as to BBB. CSXT requests that we grant the exemption for abandonment of both the opposed<sup>8</sup> and unopposed portions of the line.

### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The exemption process is designed to minimize regulatory burdens. However, it is used only when the information provided is sufficient for us to reach an informed decision. Typically, the types of abandonment transactions that are exempted are those where the shippers do not contest the abandonment or, if they do contest it, where revenue from their traffic is clearly marginal compared to the cost of operating the lines. Where there is an inadequate record on which to grant an abandonment petition for exemption, the petition will be denied outright. See Boston and Maine Corporation--Abandonment Exemption--In Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub-No. 75X) et al., slip op. at 5 (STB served Dec. 31,

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<sup>6</sup> It also submits that the revenues and costs associated with the 0.2-mile segment must be accurately determined before a finding can be made that the cost of repair of Bridge No. 1 would be an undue burden on CSXT.

<sup>7</sup> CSXT submits that “[t]he Board cannot be expected to bifurcate an abandonment proceeding merely because a party rearranges the evidence submitted by the railroad.”

<sup>8</sup> CSXT argues that BBB has not met its burden under 49 CFR 1152.25(a)(1)(ii)(C) by showing that CSXT can operate the portion of the line profitably, including an appropriate return on its investment for those operations.

1996). In this case there is insufficient information for us to make an informed decision on the merits of the abandonment petition for exemption, given the opposition here. See San Joaquin Valley Railroad Company--Abandonment Exemption--In Kings and Fresno Counties, CA, STB Docket No. AB-398 (Sub-No. 4X), slip op. at 3 (STB served Mar. 5, 1999).

As in any abandonment case, whether authority is sought by application or petition, the railroad must demonstrate that the line in question is a burden on interstate commerce. Typically, in an attempt to make that showing, the carrier submits evidence to show that the costs incurred by the railroad for the line exceed the revenues attributable to it. In its data filed relative to the operation of the entire 13.34 miles, CSXT indicates the sources of its information but does not provide detailed supporting documentation to show how the data were developed. Similarly, the data CSXT provided in its October 23 motion relative to the 0.2-mile segment are not supported, nor is the basis provided as to how the figures were derived.

In particular, we cannot verify the repair or rebuilding costs for Bridge No. 1, which is essential to moving BBB traffic. CSXT estimates a bridge repair cost of \$214,500 and a rebuilding cost of \$360,000, but fails to show how these costs were derived. The only evidence in support of the bridge repair estimate is an inspection report prepared by CSXT engineers listing the types and volume of work to be performed.<sup>9</sup> No unit costs are provided to allow verification of the cost estimate. Based on our experience, bridges that compare to Bridge No. 1 in length, height and structural composition can be rebuilt for less than CSXT's estimated repair cost. Accordingly, CSXT's estimates appear to be unacceptably high.

CSXT has asked that we not bifurcate this proposal and we will not do so. While abandonment decisions are not based solely on mathematical computations and considerations, the petitioner here has failed to show that the current situation imposes a burden on it that outweighs the harm if the line were abandoned. The rail transportation policy provides, among other things, that the Board in regulating the railroad industry is to "ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense." In view of the opposition in this case and CSXT's failure to support the data that it has presented, we are unable to conclude, on the present record, that regulation is not required to carry out the rail transportation policy. We believe that a more thorough review is warranted, and, therefore, conclude that the petition for exemption should be denied.

Denial of this petition is without prejudice to CSXT's refiling an appropriate abandonment application or a petition for exemption that supports whatever proposal it chooses

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<sup>9</sup> Assertedly, Bridge No. 1 would require replacement of 28 pilings, 11 caps, 120 stringers, and all flooring and curbs.

to pursue.<sup>10</sup> Any new filing must be under a new docket subnumber accompanied by a new filing fee.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The supplemental pleadings are accepted for filing.
2. CSXT's petition for exemption is denied.
3. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary

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<sup>10</sup> CSXT may choose to bifurcate the proposal between the two segments and file them independently.